

EXHIBIT “D”

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IN THE FEDERAL COURT OF
 THE NORTHERN DISTRICT OF ALABAMA

CIVIL ACTION NUMBER
 2:06CV 377-WKW

PIONEER SERVICES, INC.,
 Plaintiff,
 vs
 AUTO OWNERS INSURANCE
 COMPANY,
 Defendant

VIDEOTAPE DEPOSITION TESTIMONY OF:
 JOHN TOMBERLIN

January 5, 2006
 10 a m

COURT REPORTER:
 APRIL R. BENDINGER, CSR

1 offered in evidence, or prior thereto.
 2 In accordance with Rule 5(d) of
 3 the Alabama Rules of Civil Procedure, as
 4 amended, effective May 15, 1988, I, April R
 5 Bendinger, am hereby delivering to MR. HARRY
 6 HALL the original transcript of the oral
 7 testimony taken January 5, 2006, along with
 8 exhibits.
 9 Please be advised that this is the
 10 same and not retained by the Court Reporter, nor
 11 filed with the Court.
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1 STIPULATION
 2 IT IS STIPULATED AND AGREED by and
 3 between the parties through their respective
 4 counsel that the videotape deposition of JOHN
 5 TOMBERLIN may be taken before April R
 6 Bendinger, Notary Public, State at Large, at the
 7 Offices of South Central Agency in Andalusia,
 8 Alabama on January 5, 2006, commencing at
 9 approximately 10 a m
 10 IT IS FURTHER STIPULATED AND
 11 AGREED that the signature to and the reading of
 12 the deposition by the witness is waived, the
 13 deposition to have the same force and effect as
 14 if full compliance had been had with all laws
 15 and rules of Court relating to the taking of
 16 depositions
 17 IT IS FURTHER STIPULATED AND
 18 AGREED that it shall not be necessary for any
 19 objections to be made by counsel to any
 20 questions, except as to form or leading
 21 questions and that counsel for the parties may
 22 make objections and assign grounds at the time
 23 of trial or at the time said depositions is

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 2 EXAMINATION BY: PAGE NO
 3 Mr Hall 6,131
 4 Mr Pearson 118
 5 Certificate 133
 6

7 INDEX OF EXHIBITS
 8 PX-1 (Subpoena) 23
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 10 PX-3 (Auto Owner Documents) 85
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<p>1 APPEARANCES</p> <p>2</p> <p>3 FOR THE PLAINTIFF:</p> <p>4 Mr. Harry Hall</p> <p>5 FARMER, PRICE, HORNSBY & WEATHERFORD</p> <p>6 100 Adris Place</p> <p>7 Dothan, Alabama 36303</p> <p>8</p> <p>9</p> <p>10</p> <p>11 FOR THE DEFENDANT, AUTO OWNERS:</p> <p>12 Mr. Joel Pearson</p> <p>13 MORROW, ROMINE & PEARSON</p> <p>14 122 South Hull Street</p> <p>15 Montgomery, Alabama 36103</p> <p>16</p> <p>17</p> <p>18 OF COUNSEL FOR JOHN TOMBERLIN:</p> <p>19 Mr. James Robertson</p> <p>20 SCOTT, SULLIVAN, STREETMAN & FOX</p> <p>21 301 St. Louis Street</p> <p>22 Mobile, Alabama 36602</p> <p>23</p>	<p>1 near you and takes down everything you say?</p> <p>2 A. No, sir, I can't remember one</p> <p>3 Q. Can you give me your full name and</p> <p>4 Social Security Number?</p> <p>5 A. John Tomberlin, John Spencer</p> <p>6 Tomberlin. Social Security Number?</p> <p>7 Q. Yes</p> <p>8 A. 422-11-1828.</p> <p>9 Q. And do you have -- well, actually,</p> <p>10 let me back up and cover this first. You have</p> <p>11 counsel here today. You are not a party to the</p> <p>12 lawsuit we're here about. Do you understand</p> <p>13 that?</p> <p>14 A. Yes, sir.</p> <p>15 MR. HALL: And I would assume,</p> <p>16 Jim, that since he is not a party, you are not</p> <p>17 of record anymore because y'all are out. And I</p> <p>18 would assume that the only objections made in</p> <p>19 this deposition will be from Joel. That's my</p> <p>20 understanding of how this should proceed. Do</p> <p>21 you agree with that?</p> <p>22 MR. ROBERTSON: Well, unless you</p> <p>23 can -- I can't imagine --</p>
Page 6	Page 8
<p>1 I, April R. Bendinger, a Court</p> <p>2 Reporter of Dothan, Alabama, and a Notary Public</p> <p>3 for the State of Alabama at Large, acting as</p> <p>4 Commissioner, certify that on this date,</p> <p>5 pursuant to the Federal Rules of Civil</p> <p>6 Procedure, and the foregoing stipulation of</p> <p>7 counsel, there came before me at the Offices of</p> <p>8 Auto Owners in Andalusia, Alabama commencing at</p> <p>9 approximately 10 a.m. on January 5, 2006, JOHN</p> <p>10 TOMBERLIN in the above cause, for oral</p> <p>11 examination, whereupon the following proceedings</p> <p>12 were had:</p> <p>13</p> <p>14 JOHN TOMBERLIN,</p> <p>15 being first duly sworn, was examined and</p> <p>16 testified as follows:</p> <p>17</p> <p>18 EXAMINATION BY MR. HALL:</p> <p>19 Q. We're here, Mr. Tomberlin, for</p> <p>20 your deposition today. I want to ask you: Have</p> <p>21 you ever given a deposition before?</p> <p>22 A. I can't remember doing one</p> <p>23 Q. Where a court reporter sits down</p>	<p>1 MR. HALL: Something privileged?</p> <p>2 MR. ROBERTSON: Yeah, privileged</p> <p>3 communications, or if there's something else</p> <p>4 that comes up that I wouldn't imagine. He's</p> <p>5 responding to the subpoena for the deposition</p> <p>6 MR. HALL: Okay. Good.</p> <p>7 Q. Mr. Tomberlin, we will select a</p> <p>8 jury out of southeastern counties of Alabama for</p> <p>9 this trial. I need to know: Do you have any</p> <p>10 relatives over the age of 19 who live in</p> <p>11 southeast Alabama, up to and including</p> <p>12 Montgomery?</p> <p>13 A. Yes, sir, quite a few.</p> <p>14 Q. Can you give me the --</p> <p>15 A. Last names?</p> <p>16 Q. -- last names?</p> <p>17 MR. ROBERTSON: You need to let</p> <p>18 him ask the question before you answer.</p> <p>19 Q. Since you haven't done a</p> <p>20 deposition before, let me give you some other</p> <p>21 guidelines. I will ask you a lot of questions</p> <p>22 today. We need to know what you know in order</p> <p>23 to help us develop this case. When I ask a</p>

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1 Q So Auto Owners would just be one
 2 of a number of particular insurance companies
 3 that y'all sold insurance for?
 4 A Yes, sir
 5 Q Now, when -- after your company
 6 has sold insurance to someone, and a particular
 7 insurance carrier -- which I understand from you
 8 may be one of a number of carriers; right?
 9 A Yes, sir
 10 Q When that carrier has issued a
 11 policy to those people, and if they subsequently
 12 have a claim, what is it that South Central
 13 Agency routinely does with respect to the claim?
 14 A We just report it to the company
 15 Q Does South Central Agency adjust
 16 claims?
 17 A No, sir
 18 Q Does South Central Agency or you
 19 investigate claims?
 20 A No, sir
 21 Q Do you or South Central Agency or
 22 anyone else employed by South Central Agency
 23 make decisions regarding claims?

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1 A No, sir
 2 Q And in this case, you didn't -- in
 3 this particular instance, with regard to the
 4 claim by Mr. Williamson and Pioneer Services,
 5 you didn't do anything other than report the
 6 claim; is that correct?
 7 A Well, I didn't report it. Cindy
 8 reported it. South Central Agency reported it.
 9 Q Now, you talked to him on several
 10 occasions about it; correct?
 11 A Checked on the status of the
 12 claim, yes, sir
 13 Q But with regard to any claim by
 14 Pioneer Services, South Central Agency didn't
 15 adjust that claim or make any decision regarding
 16 that claim, did it?
 17 A No, sir
 18 Q Have you told us about all
 19 conversations you had with Mr. Williamson
 20 regarding Pioneer Services' claim, to your
 21 knowledge --
 22 A Yes, sir --
 23 Q -- today?

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1 A -- to my knowledge
 2 Q Did you ever tell Mr. Williamson
 3 that it would be acceptable for him or Pioneer
 4 Services to dispose of any damaged equipment at
 5 Pioneer Services?
 6 A No, sir
 7 Q Similar question: Did you ever
 8 instruct Mr. Williamson to dispose of
 9 property --
 10 A No, sir
 11 Q -- of Pioneer Services?
 12 A No, sir
 13 Q Did you ever have any discussions
 14 with Mr. Williamson about the disposal of the
 15 property?
 16 A Yes, sir
 17 Q When were those discussions?
 18 A I can't remember the date -- the
 19 actual date, but he called me in the morning
 20 I'm assuming it was probably 9 -- between 9 and
 21 11 o'clock in the morning. And he called me in
 22 a panic saying that he had been requested to
 23 show the inventory, the equipment that was

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1 damaged to Auto Owners, either to the claims
 2 adjuster or to someone else independently. He
 3 told me he had thrown everything away, what
 4 should he do.
 5 Q Was that the first conversation
 6 you had with Mr. Williamson or anyone with
 7 Pioneer Services about disposal of any contents
 8 of their property that we're talking about here
 9 today?
 10 A That's the only discussion we had
 11 as far as disposal of equipment, but we had a
 12 few conversations before that trying to get the
 13 claim paid.
 14 Q I understand that, but I'm talking
 15 about with regard to disposition or disposal of
 16 equipment of Pioneer Services --
 17 A That's the only conversation
 18 Q What I'm understanding from you,
 19 from what you testified to a moment ago, is that
 20 you never had any discussion with Mr. Williamson
 21 or anyone with Pioneer Services, about disposal
 22 of equipment until after -- when Mr. Williamson
 23 called you and told you he had already disposed

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1 of that equipment; is that correct?
 2 A That's correct
 3 Q Now, you mentioned going over to
 4 Pioneer Services -- I believe, you said the day
 5 after the storm; is that correct? You went --
 6 physically went to the office next door of
 7 Pioneer Services the day after the storm?
 8 A I did To check on my client,
 9 yes
 10 Q And that was the day after the
 11 storm?
 12 A It was either the day after or
 13 within a couple of days, I would think
 14 Q I believe you testified in
 15 response to some questions by Mr Hall that you
 16 saw some boxes with water on them Is that what
 17 you said?
 18 A Looked like --
 19 Q Don't let me characterize it
 20 wrong What I'm asking you -- I'm just asking
 21 you am I correct If I'm not, I want you to
 22 tell me correctly what you --
 23 A I didn't see actual water, you

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1 know, like standing water, but I saw where water
 2 appeared to be on the boxes So the boxes had
 3 incurred some type of water on them or some
 4 liquid -- how about that? And I would assume
 5 water
 6 Q And were these closed boxes?
 7 A The majority of them were
 8 Q Did you physically inspect the
 9 boxes to see what was in or not in any of the
 10 boxes?
 11 A No, sir
 12 Q Did you observe to see if the
 13 boxes had cords coming out of them, or were any
 14 of them connected to electrical service?
 15 A I didn't notice anything
 16 Q Okay But there was a number of
 17 boxes that were closed boxes; is that what
 18 you're testifying to?
 19 A Yes
 20 Q Do you have --
 21 A In a storage room
 22 Q So all of these boxes that you saw
 23 were in a storage room?

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1 A Right Most of them, I don't
 2 remember being open
 3 Q It appeared that these boxes and
 4 the items -- whatever items were in these boxes,
 5 were in a storage room and not in use?
 6 A Yes, sir
 7 Q That's correct?
 8 A Yes, sir, that's correct
 9 Q With regard to the water that you
 10 saw on the boxes, do you have an idea as to what
 11 percentage of the boxes you saw any water damage
 12 or water marks or stains on?
 13 A What percentage of the boxes that
 14 I saw?
 15 Q Yeah
 16 A Just -- I can't remember It
 17 wasn't -- I didn't notice 15 boxes of water
 18 damage Probably four or five I didn't really
 19 pay that close attention
 20 Q Do you have an estimate of the
 21 number of boxes you saw in the storage room?
 22 A There were quite a few I can't
 23 remember -- you know, 40 or 50 Maybe not that

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1 much 30 Counting the small boxes,
 2 everything, I'd guess that
 3 Q Did you observe any damage to the
 4 structure in that area of the building?
 5 A No, sir
 6 Q Did you have any discussion with
 7 Mr Williamson at that time regarding those
 8 boxes or the items in those boxes?
 9 A Probably said, I'm sorry to see
 10 all damage I'll try to get it taken care of as
 11 quick as I can
 12 Q Did the offices of Pioneer appear
 13 to you to be in the condition -- their poststorm
 14 condition, or did it appear that people were
 15 already over there working and cleaning up or
 16 doing anything?
 17 A When I was over there, I didn't
 18 notice anybody working indoors There might
 19 have been someone that worked on the outside
 20 Might have had some leak in there I can't
 21 recall
 22 Q Now, you were asked a number of
 23 times about conversations between you and Bill

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<p>1 Reaves or -- is Bill Reaves the only person with 2 Auto Owners that you ever spoke to regarding 3 this claim, or were there other people with Auto 4 Owners that you spoke to? 5 A I might have spoke with Billy 6 Barrett, the claims manager. You know, when 7 everything got over Bill's head, I went to bat 8 for Jimmy to try to get the claim paid 9 Q Okay Let me narrow the question, 10 then Before the conversation where 11 Mr Williamson called you about the disposal of 12 the equipment, had you spoken with anyone else 13 at Auto Owners other than Bill Reaves? And 14 maybe not even Bill Reaves, but other than Bill 15 Reaves? 16 A Before I learned of the disposal 17 of the equipment? 18 Q Yes. 19 A I don't believe I spoke to anybody 20 at Auto Owners other than Bill Reaves. 21 Q Okay That's what I'm trying to 22 get at I'm trying to get at your recollection 23 If you spoke to Billy Barrett, it would have</p>	<p>1 Q In fact, I believe I understood 2 you earlier, you testified that your 3 conversation in that regard with Mr Reaves is 4 that he had expressly told Mr Williamson not to 5 dispose of the equipment? 6 A That's correct 7 MR PEARSON: I don't have 8 anything else 9 MR HALL: Just a final follow up 10 here 11 12 REEXAMINATION BY HALL: 13 Q Did Mr Reaves ever mention to you 14 that instruction that Mr Pearson was asking 15 about, to maintain the equipment -- did he ever 16 mention that before he learned the equipment had 17 been thrown away? 18 A He never mentioned to me before, 19 but I was out of the claim loop He might have 20 mentioned it to Cindy I don't remember 21 Q But in all your phone calls, he 22 had never mentioned any instruction about how 23 long or if Jimmy Williamson should hold on to</p>
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<p>1 been after you had received the call from 2 Mr Williamson about the disposal of the 3 equipment? 4 A It would. And probably to turn it 5 down or decline of the claim That's probably 6 when I would have called -- when I first learned 7 there were any problems, I probably would have 8 called Billy 9 Q Had you spoken with Bill Reaves 10 prior to the phone call you received from 11 Mr Williamson where he advised you that he had 12 disposed of the equipment? 13 A Yes 14 MR HALL: I'm under two minutes 15 here Can I change the disk? 16 MR PEARSON: That'll be fine I 17 only have a couple more minutes 18 MR HALL: Keep going 19 Q At any time, did Mr Reaves ever 20 advise you that he had given Mr Williamson any 21 indication that it was okay to dispose of the 22 equipment? 23 A No.</p>	<p>1 the equipment? 2 A He didn't mention it then 3 MR HALL: Going off the record on 4 disk two of John Tomberlin's deposition 5 6 ENDED AT 12:23 p m 7 8 FURIHER DEPONENT SAITH NOT 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23</p>

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CERTIFICATE

STATE OF ALABAMA)
MONTGOMERY COUNTY)

I hereby certify that the above
and foregoing deposition was taken down by me in
stenotype, and the questions and answers thereto
were transcribed by means of computer-aided
transcription, and that the foregoing represents
a true and correct transcript of the deposition
give by said witness upon said hearing

I further certify that I am
neither of counsel nor of kin to the parties to
the action, nor am I in any way interested in
the result of said cause

APRIL BENDINGER, CSR
CERTIFICATE NUMBER CSR-384

My Commission Expires
June 8, 2008

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